

Nicoletti Hornig & Sweeney

WALL STREET PLAZA
88 PINE STREET
SEVENTH FLOOR
NEW YORK, NY 10005-1801
TELEPHONE 212-220-3830
TELECOPIER 212-220-3780
E-MAIL: general@nicolettihornig.com
WEBSITE: www.nicolettihornig.com

MICHAEL MARKS COHEN
OF COUNSEL

NEW JERSEY OFFICE:
505 MAIN STREET, SUITE 106
HACKENSACK, NEW JERSEY 07601-5928
TELEPHONE 201-343-0970
TELECOPIER 201-343-5882

JOHN A.V. NICOLETTI
JAMES F. SWEENEY
DAVID R. HORNIG *
FRANK M. MARCIGLIANO
MICHAEL J. CARCICH
BARBARA A. SHEEHAN
NOOSHIN NAMAZI †
ROBERT A. NOVAK
TERRY L. STOLTZ
MICHAEL F. MCGOWAN
VINCENT A. SUBA
SAMUEL C. COLUZZI †
GUERRIC S.D.L. RUSSELL †
LINDA D. LIN ◊

VAL WAMSER †
KEVIN J.B. O'MALLEY
WILLIAM M. FENNELL
SCOTT D. CLAUSEN †
FARA N. KITTON †
JAMES E. MORRIS Δ†
NORA A. VALENZA-FROST †
JEFFREY BINKLEY

January 5, 2012

* ALSO ADMITTED IN TEXAS
† ALSO ADMITTED IN NEW JERSEY
◊ ALSO ADMITTED IN CALIFORNIA
Δ ALSO ADMITTED IN MARYLAND

VIA ECF

Honorable Roanne Mann
United States Magistrate Judge
United States District Court
225 Cadman Plaza East
Brooklyn, New York 11201

RE: *In the Matter of the Petition of North East Marine Inc. as Owners
Of the Tug ELENA, a 35' Deck Barge and a 40' Deck Barge
For Exoneration From and Limitation of Liability*
United States District Court – Eastern District of New York
Case No.: CV-09-5600 (Amon, J) (Mann, M.J.)
Our File No.: 10000530 DRH/GSR

Dear Judge Mann:

This firm represents Petitioner North East Marine Inc. (“Petitioner” or “North East”) in the above-referenced limitation proceeding. We write in response to the Stipulation submitted to the Court on January, 4, 2012.

As we set out in the underlying motion briefing, the Court's paramount interest when considering a request to vacate an injunction restraining suits is to ensure the limitation fund is protected. The new Stipulation by claimants still fails to satisfy this burden. Namely, the Stipulation does not adequately protect the limitation fund from the direct claims of third-parties who will be added in the State Court action.

Counsel for claimant El Sol Contracting and Construction Corporation (“El Sol”) has already advised all parties that they will be impleading Caribe, a subcontractor and claimant

January 5, 2012

Page 2

Boody's employer, if the parties are permitted to proceed in the underlying State Court action. Undoubtedly, Caribe will then assert indemnity, contribution and other claims against Petitioner. While claimant El Sol may stipulate that it will not seek to enforce any judgment it may have against Caribe until the limitation issues are resolved, El Sol (or any of the claimants for that matter) would nevertheless be unable to prevent Caribe, who is not subject to the terms of the proposed Stipulation, from recovering any attorney fee awards or other direct claim awards from Petitioner. In light of the low value of the vessels involved, Petitioner could conceivably be liable to Caribe in excess of the limitation fund under such circumstances. The Stipulation submitted by claimants does not protect the limitation fund if Caribe then turns to collect this excess liability before the limitation issues are decided.

Furthermore, the Stipulation should be rejected by the Court on the basis that Messrs. Dougherty Ryan Giuffra Zambito & Hession wrongfully signed the same on behalf of North East. While that law firm may represent the individual interests of claimant Francois Guillet, they certainly have no authority to act on behalf of Petitioner in this matter. It is this office and not Messrs. Dougherty Ryan Giuffra Zambito & Hession who are lead counsel of record for North East. North East is also not a claimant in this action as they improperly contend in the Stipulation.

Accordingly, Petitioner respectfully requests that the Court deny claimants' request to vacate the injunction restraining suits.

We thank the Court for its time and consideration to this matter.

Respectfully submitted,

NICOLETTI HORNIG & SWEENEY

By:



David R. Hornig

DRH/s/sa

cc:

VIA ECF

HOFMANN & SCHWEITZER
Attorneys for Claimant ROBERT BOODY
360 West 31st Street, Suite 1506
New York, New York 10001-2727
Tel. No.: (212) 465-8840
Facsimile: (212) 465-8849

Attention: Paul Hofmann, Esq.

January 5, 2012

Page 3

PILLINGER MILLER TARALLO, LLP
Attorneys for Claimant EL SOL CONTRACTING and
CONSTRUCTION CORPORATION
570 Taxter Road, Suite 275
Elmsford, New York 10523
Tel. No.: (914) 703-6300
File No.: LIB-00105/JTM
Facsimile: (914) 703-6688

Attention: Terry Hall, Esq.

HERZFELD & RUBIN, P.C.
Attorneys for Claimant FRANCOIS GUILLET
125 Broad Street
New York, New York 10004
Facsimile: (212) 344-3333

Attention: James Donat, Esq.

DOUGHERTY, RYAN, GIUFFRA, ZABMITO & HESSION
Attorneys for Claimant FRANCOIS GUILLET
and North East Marine, Inc.
131 East Thirty Eighth Street
New York, New York 10016-2680

Attention: John J. Hession, Esq.